Quid Novi

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Bow ties ruled out

Interview: Simmonds on grading

This is the second part of an interview with Associate Dean Ralph Simmonds continued from last week.

Quid: Allow me to pose a hypothetical question. Every year you split the incoming class from A-M and N-Z into two sections. Every year the A-M's have a dozen failures and the N-Z's have a couple. Do you sincerely believe that the A-M's are always less successful than the N-Z's? Or do we have tremendous grading inconsistencies in some classes?

Simmonds: It would be curious if that happened every year. Everything I know about standard deviation analysis tells me that's odd. It could be odd in either direction though. I don't see it as an inappropriate thing to ask whether such a thing is happening and if so whether it has a rational explanation. Once we have the data we'll be in a better position to say whether in fact we have that problem, where we have it, and begin the task to figure out what we can do about it.

Quid: If the Review intends to push McGill to the forefront of law schools with international reputations it will have to compete directly with the great traditional U.S. law schools. It seems that we may want to follow in the steps of their grading procedures.

Simmonds: I caution you about drawing comparisons of that sort too readily. There are different pressures that operate in those schools than operate here. One of the things that makes Canadian law schools different from 2nd or 3rd hand American law schools, from what I have seen so far, is that we are much less, generally speaking, cruel to our students and particularly to first year, than the American law schools are.

One of the things that I would find interesting as an exercise is to find out to what extent there is a difference between what we call the "wastage rate" in first year between the large U.S. law schools and here. My operating hypothesis would be that the wastage rate is significantly higher in the U.S. law schools. People are driven out before reaching the exam stage in larger numbers than they are here. If that is so then we

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Censorwatch

In Argentina this year two magazines, Quorum and La Semana, were confiscated by the government in an act of political censorship. In Strasbourg the European Court of Human Rights sanctioned Britain for the censorship of mail in British prisons, and in Egypt a well-kown comedian, Said Saleh was jailed without trial for deviating from the authorized text of a play in which he was acting.

These are only three of hundreds of cases of political censorship that occur every year. More drastic cases occur in Iran, Turkey, the USSR and other countries where sanctions against groups and individuals who speak their minds go as far as exile, torture, or death. The victims of censorship are usually professionals and often highly respected individuals, therefore influential in a way which poses a threat to totalitarian governments. For example, in 1983 the purges in Kenya and Turkey have targeted academics; in Brazil it was lawyers and journalists; in Eastern Europe samizdat publishers; and elsewhere in the world writers, broadcasters, artists and musicians were persecuted for speaking out against governments or political factions.

Questions of legality or violation of conventions such as the Universal Declaration of Rights are almost without a foothold in many

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Simmonds

have to view U.S. failure rates with more caution.

The other cautionary factor is that even though we are selective the U.S. schools are even more selective, especially the ones with the biggest names like Harvard, Yale, Chicago, and Stanford. The formal quality of the incoming class in terms of GPA and LSAT, putting off for one moment if they are reliable indicators of lawyering skills, differs to the extent that the bottom half of their classes have GPA and LSAT figures that are higher than the bottom half of our class. The top halves are probably comparable but the bottom halves are probably different. This is not a reason for us to be surprised because it is a function of having far more places for the applicant pool in the U.S. but far fewer places at the top schools for the applicant pool than there are in Canada. I think they can be much more selective.

Those two factors combined mean that we would want to look at those figures with caution. Now I may be wrong with both. I may be wrong on wastage rate and on GPA and LSAT for the bottom half of the class, but my informed impression is that those two factors will go a long way to account for the differences.

Quid: Tied into the failure rate is the issue of a "D" grade. Are we going to be making low C's now D's or are "good" F's going to become D's?

Simmonds: What I suspect is likely to happen is that some people's C grades under the present system will become D because the significance of the C grade to the professor assigning it was that while the student had passed, it was at the margin of acceptability and now the D grade will offer a better way of communicating that. For other people it may well mean that they will be able to grant a passing grade where before it was an F. My suspicion is that the two will cancel each other out.

Quid: Doesn't this cause inconsistency across the board in the Faculty's grading? Different grades from different professors will take on different values and the success that your achieve in law school will depend on the professors you take rather than the work or aptitude you have developed.

Simmonds: No. Grading is probably the most difficult exercise in my experiece that we perform as law school instructors. We have a great deal of assistance from various guides that we receive as instructors from the law school, most of which are equally available to students. They are things like a narrative description of the significance of the various grade levels - C competence, C+ competence plus; B good, and so on.

But if you ask yourself what does competence in contract mean? Does it mean the ability to apply the postal rule? It might to a particular professor of contracts but not to the same degree with another professor.

We can standardize what competence means in a course to some extent by a second source of information. That is a professor's own experience in teaching the course in the institution and being a member of the Faculty Council meeting which approves grades by professors in the other sections and other law school grades. That enables a professor to see how labels like competence and competence plus are translated into letter grades in the spectrum of his own course and other courses.

The experience you build up in teaching is built up fairly quickly. Senior colleagues are particularly useful in the area of grading. You acquire, generally speaking, a good sense of how to translate a paper into a list of labels when judging that paper against what you reasonably expected from the class.

Obviously a contracts class which examined the full ramifications of the postal rule in its social, economic, and intellectual content generally, would impose different demands on the student at the level of evaluation than a course which taught the postal rule as part of a remedies or consideration-oriented approach to contract law. The assessment has to be directed to what the professor demanded of the students. The things that worries me the most when I grade students is that I am always attempting to reassure myself that I am not asking more of the students than can be reasonably expected, that my examiation has been competently constructed so that it generates results that make sense and that I am applying my criteria evenhandedly. I am reasonably convinced that all my colleagues are trying to do the same.

Quid: From the reference to Faculty Council, is it to be understood that there is pressure put on professors to fall in line, to effect some degree of conformity, or is it pretty much a rubber stamp meeting on grades?

Simmonds: It is not a rubber stamp. It's probably better to say that the Examination Board will head off what seems to be discrepancies between sections and sometimes between courses by exploring with a professor concerned if there are any problems. It has happened that a professor has changed

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mark allocations in light of what they were told. It is generally true to say that Faculty Council will approve the grades submitted to it but those grades would have been through the Exam Board review process beforehand.

It sometimes happens at Faculty Council that the work of the Exam Board is itself examined so that these meetings usually take many hours. The process can therefore hardly be described as rubber stamping. It's not to say that it works perfectly. It may be that we may need to do further work on it. My impression is that a lot of effort is invested here and that it pays off in a process that operates reasonably well.

Quid: You told us at the outset that you followed Associate Dean Macdonald to Windsor, then with a year lag to McGill and followed him to this position. The important question remains - when will you start to wear green plaid jackets and bow ties?

Simmonds: I will have to say that in that respect I have absolutely no intention of following the bow tie precedent. I have a tweed jacket which is famed in song and legend in the school. I will make no apologies when I wear it. I suppose I can say that that is a precedent of former Dean Macdonald that I have no intention of following.

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cases of censorship, as censors are often careful to interpret the law in peculiar ways to justify their actions. Coverage of these cases is patchy and incomplete in the news, and many cases by their very nature can be reported only with the greatest difficulty and danger to the source of information and to all individuals involved. There is one magazine which provides balanced reporting on censorship world-wide, and over the past 12 years it has harvested very high acclaim from journals, universities and even government institutions. The magazine is Index on Censorship, published 6 times a year in London, England (21 Russell St., WC2B 5HP). Now at McGill there exists an arm of this monitoring group.

Censorwatch (McGill) has been set up by a McGill law student to do its part in monitoring political censorship and increasing public awareness of the problem. Members will be entitled to attend monthly meetings, receive Briefing Papers and claim a discount on one subscription to the magazine Index on Censorship. Throughout the year Censorwatch (McGill) will be hosting activities such as readings of censored poetry and discussion groups on political censorship. If you are interested in becoming a member or would like more information, contact Sandra Stephenson at 3480 McTavish, Rm. 415 (tel. 392-8911). Watch future issues of Quid Novi for reports on specific cases of censorship.

Sandra Stephenson

Le comité de rédaction vous invite à contribuer au Quid Novi en nous faisant parvenir des articles, des lettres au Quid Novi, ainsi que toute annonce concernant les activités à venir. Nous nous prions de les soumettre avant le vendredi de la semaine précedant la publication du journal. Le bureau de Quid Novi se trouve à côté du bureau du LSA. Les réunions se tiendront tous les lundis à 1:00 pm.

Quid Novi Announcement

Quid Novi welcomes articles, letters to the editor, and notices of coming events. All submissions must be received by Friday for publication in the following Wednesday's paper. The Quid Novi office is beside the LSA office and the Bookstore. Meetings are held every Monday at 1 p.m.

Quid Novi

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Editorial

Through the looking glass

The surreal world of law school is often heightened by the arcane words and phrases used by professors. In this eerie world things are seldom as they seem, and language seems to take on a totally new meaning. Therefore as a public service and with the aid of a federal grant the following table has been prepared to enable the uninitiated to appreciate this reality. Clearly, Humpty Dumpty was not the only person who could make a word mean just what he wanted it to mean.

What They Say	**What They Mean**
This is the key to understanding Comm. Trans.	It's the only part I understand.
Lord Denning is the most original and provocative judge in the common law.	He's been steadily losing his mind since High Trees.
Canadian constitutional law has centered on the division of powers, and not civil liberties.	We'll now discuss why Frank Scott was my favourite professor when I went here.
Foundations is a wide-ranging course.	I'll spend the semester reminiscing about Oxford and quoting Shakespeare.
Public International Law may be the most important course you take.	Discuss customary law on the exam and you'll pass.
This class will use the Socratic method.	I'm too busy to prepare lectures.
This will be a lecture course.	I'll read from the notes I took 15 years ago.
The exam will be Open Book.	The price of John Shields' outlines will increase geometrically.
Perpetuities is very difficult.	If anybody understands me come and explain it to me after class.

Wayne Burrows

QUID NOVI COFFEE AND DONUTS EXTRAVAGANZA!

All writers, artists, poets, cartoonists, advertizing executives, radicals, conservatives, sports aficionados, and other interested and interesting people are warmly invited to meet the Quid and have a snack Thursday September 15 at 1:00 in the Common Room. La participation francophone est particulièrement encouragée.

A Note From the Dean

Bob Wintemute, who graduated with the Geoffrion Gold Medal last year with the LL.B. and B.C.L. degree, proceeded to the Bar of New York shortly after graduation. He writes me that the exam consists of four sessions of about three hours each spread over two days. The first day is devoted to six essays and 50 multiple choice questions in New York law. The second day is for the multi-state bar examination, a standardized test (like the LSAT) made up of about 200 multiple choice questions. The standard subjects of contracts towards property, evidence, criminal law, etc. form the subject matter of the second examination. The other examination covers most other subjects that one can think of.

Bob writes as follows: "I did not feel the least bit disadvantaged by having studied in Canada. The New York Bar exam tests only rules and not authority. For the most part, the American rules are the same. In fact, I was probably better prepared than most American students because, after four years at McGill, I had taken a course in virtually every subject covered by the exam."

I have always been concerned about McGill students going to an American bar who may not have any exposure to U.S. constitutional law. On this matter Bob informs me that he read 400 pages of a "basic textbook" last winter. That, plus the Bar Review lectures, was more than adequate preparation.

Bob concludes: "In short, I think that McGill can safely tell any American thinking of studying law at McGill that he will be well prepared for a U.S. bar exam."

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person "except in accordance with the principles of fundamental justice." This the Court held to mean one's rights to know a decision is being considered, to know the contents of the charge, to defend oneself, and to be judged impartially on the basis of the totality of the evidence submitted to the administrator. These requirements were not met.

Damages were awarded Mr. Collin under s.24 of the Charter for want of medical care, loss of visits by his mother, and reduction of life expectancy with $7,500 as exemplary damages.

The Crown has already signalled its intention to appeal both the return to Leclerc and the damages. The decision to elevate the level of the ruling seems an odd risk as the Crown neglected to contest the quantum of damages at trial, and will not be able to do so on appeal. Nor will it be able to set aside the damning findings of fact regarding disguised punishment. Lawyer Nicole Daignault, representing Mr. Collin, comments that her client looks forward to placing this landmark case before the Supreme Court.

Steve Fineberg
Québec Civil Liberties Union

1. Martineau & Butters v. Matsqui Institution Inmate Disciplinary Board [1980] 1 S.C.R. 602.

2. Unpublished decision of the Federal Court (Trial Division), T-9227-82.

To All Groups, Associations, Societies:

Funding Requests Deadline -- 23 September 1983

If you are intending to seek funding from the LSA for the 1983-84 year, please submit your requests by 12:00 noon, Friday, 23 September 1983, at the LSA office in the mailbox marked "Treasurer".

Requests must be submitted in writing, showing a budget breakdown for the year. Photocopies of receipts from last year and of quotations for planned events and expenses for this year are requested, wherever possible, to ensure that your request is given full consideration. You should also indicate the revenues you are requesting or expecting from other sources, such as the office of the Dean, the Faculty, or the Students' Society.

Paul Dunn
Treasurer

Quebec Prisoner Rights

Not since the 1979 case of Martineau No.2 (1) has our highest tribunal intervened in the nightmarish world of Canada's federal penitentiaries. In light of a remarkable decision rendered by the Federal Court this February in Robert Collin v. Raymond Lussier (2), one now suspects the Supreme Court is again to have the opportunity to address a message to the Canadian Correctional Service (CCS).

Mr. Collin's petition for relief surfaced during a period of particularly hostile relations between the CCS and its critics. Solicitor General Kaplan's announced intention to construct large numbers of super-maximum penitentiaries has met with dismay and resistance, as have the recent cutback in penitentiary educational programs, the introduction of double bunking within single cells, and the construction of microphones in family visitation rooms. The twenty-five year minimum eligib ility for parole in certain life sentences remains another source of bitter antagonism.

Most significantly, the Collin case follows hard on the heels of last July's bloody events at Archambault Penitentiary, the shock waves of which are still spreading throughout the corrections community. The federal government has hastily placed the alleged perpetrtators before the criminal courts through preferred indictments. In the near future civil and perhaps criminal actions will be brought against personnel of the CCS by inmates claiming torture and widespread abuse of their constitutional rights following the July incident, allegations which have been published in Canada and abroad by many local and international human rights organizations, Canadian Churches, and M.P. Svend Robinson, member of the Parliamentary Standing Committee on Justice and Legal Affairs. Some of the local parties active in publicizing these grave allegations now must defend themselves against contempt of court charges.

It is in this highly political atmosphere that Mr. Collin, incarcerated since 1969 in medium security Leclerc Penitentiary, requested the Federal Court (Trial Division) to issue a writ of certiorari under s.18 of the Federal Court Act quashing his involuntary transfer to Laval maximum, and a writ of mandamus ordering his return to Leclerc, along with an order under s.24(1) of the new Charter of Rights and Freedoms for "such remedy as the court considers appropriate and just in the circumstances." The transfer to Laval was initiated by the Respondent, who is Director of the CCS Regional Reception Center.

Judge Décary Orders Return

Judge Décary ordered the Petitioner to be returned immediately to Leclerc, and Director Lussier to pay him $18,136.00. The decision was based on three arguments:

(1) The court made a finding of fact that the transfer was a disguised punishment. Here the concept of a prison within a prison was adopted from Martineau and other jurisprudence to describe a further reduction of the prisoner's freedom by transfer to a higher degree of security. Penitentiary Service Regulation 38(2) clearly specifies who is empowered to impose punishment, and one finds no category into which the Respondent might fall.

In concluding that the transfer was in reality an attempt to disguise punishment the Court noted that no clear reasons were evident in the CCS reports which purportedly necessitated the transfer; on the contrary, states Judge Décary, Mr. Lussier's decision was in fact a response to Mr. Collin's lawful participation as legal affairs clerk with the Leclerc Inmates Committee, which recently had conducted investigations concluding that $44,450 of their social budget's expenditures were unaccounted for, and that prison staff were removing 1,000 to 1,500 pounds of meat monthly from the kitchen.

(2) The transfer was illegal because the Commissioner's Directives clearly stipulate the permissible grounds for transfer, and do not include the reason described above. The Directives also state that transfers can be effected only to institutions within a prisoner's security classification.

The Penitentiary Service Regulations go on to state that prisoners must be kept in an appropriate institution, and that the process for determining the correct security classification is to follow substantive criteria and procedural guidelines set out in the Directives. These were not applied in Mr. Collin's case. In this respect, Mr. Lussier did not satisfy his duty to act fairly as required by the Martineau decision.

(3) Mr. Collin's health was directly threatened by his separation from the medical facilities of Leclerc. Article 7 of the new Charter guarantees one's constitutional right not to be deprived of security of the

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